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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,604	02/20/2002	Thomas Kruger	70363	7284

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MCGLEW & TUTTLE, PC
1 SCARBOROUGH STATION PLAZA
SCARBOROUGH, NY 10510-0827

EXAMINER

RAGONESE, ANDREA M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/079,604	Applicant(s) KRUGER ET AL.	
	Examiner Andrea M. Ragonese	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-12 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>17 December 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on December 17, 2004 has been entered. Examiner acknowledges that **claims 1, 6-12 and 17-20** have been amended, and **claims 2 and 13** have been canceled. Subsequently, **claims 1, 2-12 and 14-20** are under consideration.

Response to Arguments

2. Applicant's arguments with respect to **claims 1-20** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102 and 35 USC § 103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. **Claims 1, 6-12 and 14-20** are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Wallace et al. (US 5,915,379).

Regarding **claims 1 and 6-10**, Wallace et al. discloses a respirator **22** and a process inherent of the use of the respirator **22**, the process comprising the following steps (column 5, line 43 through column 6, line 31):

- reading data that specify a number of different available modes of operation of the respirator **22** into an external electronic, optical or magnet storage medium, said data being encoded as a code in said storage medium; and

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- reading and encoding the data by writing and reading unit **30/35** associated with the respirator **22**.

Although Wallace et al. does not explicitly recite the step of “determining the clearing of the available modes of operation on the respirator based on the data read by the writing and reading unit,” performing this step would be obvious, if not inherent, given the fact that it well known in the art that when a computer with memory, such as processor/memory **30/35**, reads any type of memory—whether it be an internal memory or an external storage source—the processor will clear the current mode of operation in order to execute the command of the code from which the memory provides. Further support is given throughout the written description in the prior art specification.

Regarding **claims 11**, Wallace et al. discloses a respirator **22** and a process inherent of the use of the respirator **22**, the process comprising the following steps (column 5, line 43 through column 6, line 31):

- providing a respirator **22** with a data storage medium element connection;
- providing a separate data storage medium element, the storage medium element being any one of an electronic, optical or magnetic storage medium;
- selectively connecting and disconnecting the separate data storage medium element to and from the respirator **22**;
- encoding data into a code that specifies a number of different available modes of operation on of the respirator **22**;

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- writing the code into the data storage medium element when the data storage element is disconnected from the respirator, the data also determining the clearing of the available modes of operation on the respirator **22**; and
- reading and decoding the code from the data storage medium element by a writing and reading unit **30/35** associated with the respirator **22**, when the data storage element is connected to the respirator **22**.

Although Wallace et al. does not explicitly recite the step of “determining the clearing of the available modes of operation on the respirator based on the data read by the writing and reading unit,” performing this step would be obvious, if not inherent, given the fact that it well known in the art that when a computer with memory, such as processor/memory **30/35**, reads any type of memory—whether it be an internal memory or an external storage source—the processor will clear the current mode of operation in order to execute the command of the code from which the memory provides. Further support is given throughout the written description in the prior art specification.

Regarding **claims 12 and 17-20**, Wallace et al. discloses a respirator **22** and a process inherent of the use of the respirator **22**, the process comprising the following steps (column 5, line 43 through column 6, line 31):

- a respiratory **22** with a separate data storage medium element connection;
- a separate data storage medium element external to said respirator **22**, the storage medium being any one of an electronic, optical or magnetic storage medium connectable to the respirator **22**, the storage medium element fully capable of having data that specify a number of different available modes of

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operation on the respirator **22**, the data and the code also fully capable of determining the clearing of the available modes of operation on the respirator **22**;

- a selective connection between the data storage medium element and the respirator **22**;
- a writing and reading unit with respirator **22** reading and decoding the code from the data storage medium; and
- a respirator processor **30** fully capable of clearing the available modes of operation on the respirator **22** based on the reading and decoding of the data from the data storage medium element.

Allowable Subject Matter

8. **Claims 3-5 and 14-16** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

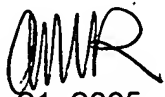
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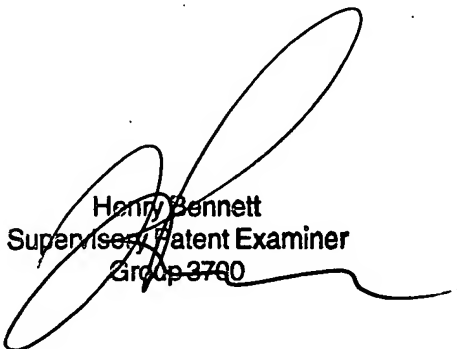
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **571-272-4804**. The examiner can normally be reached on Monday through Friday from 9:00 am until 5:00 pm.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR 
March 21, 2005


Henry A. Bennett
Supervisor, Patent Examiner
Group 3743